

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 29 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF WEALTH TAX

Versus

CHANDRASINHRAO D GAEKWAD

Appearance:

MR RP BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 12/05/99

ORAL JUDGEMENT (per R. Balia, J.)

At the instance of Commissioner of Wealth-tax, Baroda, two questions of law arising out of its orders in WTA Nos. 407 to 411/Ahd/1982 relating to Assessment Years 1971-72 to 1975-76 have been referred to this Court for its opinion with the statement of the case by the

Income Tax Appellate Tribunal. The questions referred are as under:

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that, on the death of Shri Chandrashinhrao on 27th March, 1965, there was complete partition of the assessee HUF of which Chandrashinhrao was the Karta?"
2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the share of the deceased Chandrashinhrao in the HUF properties was liable to be excluded from the wealth of the assessee HUF?"

2. It has been pointed out that like questions arising out of WTA os. 585 to 589/Ahd/81 relating to Assessment Years 1966-67 to 1970-71 (immediately preceding 5 years) had been referred to this court for its opinion which forms subject-matter of WTR No. 54/83 in respect of the very same assessee. The said WTR No. 54/83 has been decided by this court on 5.11.98 by which both the questions were answered in negative, in favour of revenue and against the assessee. There is no change in the facts and circumstances of the case in which the two questions have arisen which are as under:

3. The assessee Chandrasinhrao H. Gaekwad was being assessed as Hindu Undivided Family. The Hindu Undivided Family consisted of two brothers Shri Chandrasinhrao and Shri Dilipsinhrao, sons of Dadasaheb. Chandrasinhrao was the karta of the family. Said Chandrasinhrao died on 27.3.65. On the death of Shri Chandrasinhrao on 27.3.65 it was claimed for the assessment year 1966-67 and subsequent assessment years that by operation of law a complete partition of HUF properties between the two branches of brothers had taken place. The claim was made in Income Tax proceedings as well as in Wealth Tax proceedings. The Wealth Tax Officer did not agree with the claim of the assessee, as the same was not accepted by Income Tax Officer too under Section 171 of the Income-tax Act, 1961. On appeal before the Asst. Appellate Commissioner, he too did not agree with the claim of the partition either under Wealth Tax Act or under Income -tax Act. However, Asst.. Appellate Commissioner upheld the contention of the assessee that to the extent the property has vested in the heirs of Chandrasinhrao by succession it has ceased to be the property of Hindu Undivided Family and the same has to be

excluded from the assessment of wealth of the existing Hindu Undivided Family. Appeal against the order of Asst. Appellate Commissioner of Wealth Tax did not find favour with the Tribunal. Following decision of this court in CWT v. Kantilal Manilal, 90 ITR 269, and of the Mysore High Court in CIT v. Smt. Nagaratnamma, 76 ITR 352, the Tribunal confirmed taken by the Asst. Appellate Commissioner.

Following aforesaid decision in WTR No. 54/83, we answer both the questions in negative, that is to say, in favour of revenue and against the assessee.

No order as to costs.

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